THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

WRIT PETITION No.26113 of 1997

Date: 23.03.2007

Between:

S. Lakshminarayana

... Petitioner

AND

Managing Director,
The Tirupati Co-op, Bank Ltd.,
Tirupati & others.

... Respondents

THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

WRIT PETITION No.26113 of 1997

ORDER:-

This writ petition is filed for a writ of Mandamus to direct respondent No.4 to initiate appropriate proceedings or to take such steps under the provisions of A.P. Cooperative Societies Act or any other Act against respondents 1 to 3 in order to make good the loss sustained by the members and depositors of the respondent Bank for the lapses committed by respondents 1 to 3.

The petitioner, who claimed to be a member of the Tirupati Cooperative Bank Limited, Tirupati, alleged in the affidavit filed in support of the writ petition that persons by name Sri C. Murali, Sri M. Suresh, Sri M. Harigopal and Sri C.B. Mohan Rao are members of the bank and that they availed loans against pledge of gold jewels. It is further averred that the said persons failed to repay the said loans and that the respondents 1 to 3 failed to initiate steps to recover the said amounts. It is alleged that as these respondents are conducting the affairs in the manner detrimental to the interest of the members and the depositors of the bank, the petitioner filed the present writ petition for the aforementioned relief.

On behalf of the Bank, 1st respondent, who is the Managing

Director of the Bank, filed a counter-affidavit in which he raised an objection regarding the maintainability of the writ petition in view of the Full Bench judgment of this Court reported in **SRI KONASEEMA CO-OPERATIVE CENTRAL BANK LIMITED, AMALAPURAM & ANOTHER v N.SEETHARAMA RAJU**[1]. It is also further mentioned in the counter-affidavit that since the loans were advanced through pledging of gold and gold jewelry, the question of taking og action for recovery of loan amounts, becoming time barred, does not arise. This respondent also denied the allegation that the bank failed to take steps to recover the amounts due to it. It is further stated that respondents 1 to 3 have no knowledge about the petitioner bringing the alleged irregularities to the notice of respondent No.4.

I have heard Sri Murthy, learned counsel for the petitioner and the learned counsel representing Sri M.Ravindranath Reddy for respondents 1 to 3.

A perusal of the averments contained in the affidavit shows that the required details are not furnished as to when the four persons named therein have taken the loans and when the payments have fallen due. The petitioner also failed to make the said four persons, against whom allegations of default are made, parties and in the absence of an opportunity to them to deny the allegations, it is not possible for this Court to give any finding adverse to them. Moreover, though the petitioner claimed that he brought to the notice of respondent No.4 about the alleged

irregularities, no evidence is adduced by him in support of the same.

Further, as held by the Full Bench of this Court in **SRI KONASEEMA CO-OPERATIVE CENTRAL BANK LIMITED** (supra), writ petition against a Co-operative Society is not maintainable except in respect of the following cases.

> "(i) If a particular co-operative society can be characterized as a 'State within the meaning of Article 12 of the Constitution (applying the tests evolved by the Supreme Court in that behalf), it would also be an 'authority' within the meaning, and for the purpose of Article 226 of the Constitution. In such a situation, an order passed by a Society against its employee inviolation of the bye-laws, can be corrected by way of a writ petition. This is not because the bye-laws have the force of law, but on the ground that having framed the bye-lws prescribing the service conditions of its employees, the Society must follow them, in the interest of fairness. If it is left to the sweet will and pleasure of the society either to follow or not to follow the bye-laws, it would be inherently arbitrary, and may very likely give rise to discriminatory treatment. A society, which is a 'State', has no act in conformity with Article 14 and, for that reason, it will be made to follow the bye-laws.
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> (ii) Even if a Society cannot be characterized as a 'State' within the meaning of Article 12, even so a writ would lie against it to enforce a statutory public duty which an employee is entitled to enforce against the Society. In such a case, it is unnecessary to go into the question whether the Society is being treated as a 'person', or an 'authority', within the meaning of Article 226 of the Constitution. What is material is the nature of the statutory duty placed upon it, and the Court will enforce such statutory public duty.
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> (iii) The bye-laws made by a co-operative society registered under the A.P. Co-operative Societies Act do not have the force of law. They are in the nature of contract, terms of contract,

between the Society and its employees, or between the Society and its members, as the case may be. Hence, where a Society cannot be characterized as a 'State', the service conditions of its employees governed by bye-laws, cannot be enforced through a writ petition. However, in the matter of termination of service of the employees of a co-operative society, S.47 of the A.P. Shops and Establishments Act provides a certain protection, and since the said protection is based upon public policy, it will be enforced, in an appropriate case, by this Court under Article 226 of the Constitution. Ordinarily, of course, an employee has to follow the remedies provided by the A.P. Shops and Establishments Act; but, in an appropriate case, this Court will interfere under Article 226, if the violation of a statutory public duty is established. It is immaterial which Act or Rule casts such a statutory duty."

The petitioner failed to plead and substantiate by any material that this case falls within the aforementioned exceptions contained in the judgment. The petitioner appears to have embarked upon a frivolous litigation by filing this writ petition and there are no merits in the writ petition.

For the aforementioned reasons, the writ petition is dismissed with costs.

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C.V.NAGARJUNA REDDY, J

Date: 23.03.2007
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[1] AIR 1990 A.P. 171 (F.B.)